IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

TUESDAY, THE 6TH NOVEMBER 2007 / 15TH KARTHIKA 1929

WA.No. 2576 of 2007

AGAINST THE JUDGEMENT IN WP(C) NO.24432/2007 DATED 21/08/2007

APPELLANT: PETITIONER:

PRABHAKARAN NAIR,
EZHAVARETHU VEEDU,
CHERUVALLOOR, CHERIYANAD,
PIN: 690 509.

BY ADV. SRI.P.B.SAHASRANAMAN
SRI.K.JAGADEESH
SRI.T.S.HARIKUMAR

RESPONDENTS: RESPONDENTS:

1. THE ADDITIONAL DISTRICT MAGISTRATE,
ALAPUZHA.

2. THE ASSISTANT EXECUTIVE ENGINEER,
ELECTRICAL SUB DIVISION, K.S.E.BOARD,
KOLLAKADAVU.

3. SUBHADRA AMMA,
THEKKEPADEETTATHIL,
CHERUVALLOOR, CHERIYANAD,
PIN: 690 509.

4. VISALMONY,
THEKKEPADEETTATHIL,
CHERUVALLOOR, CHERIYANAD,
PIN: 690 509.

5. LALITHAMMA,
OTTATHENGUVILAYIL,
CHERUVALLOOR, CHERIYANAD,
PIN: 690 509.

BY ADV. SRI.C.K.KARUNAKARAN, SC FOR KSEB
SENIOR GOVERNMENT PLEADER SMT.K.MEERA

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 06/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L. DATTU, C.J. & K.T. SANKARAN, J.

.....

W.A. No. 2576 OF 2007

.....

Dated this the 6th November, 2007

J U D G M E N T

H.L. Dattu, C.J.:

Being aggrieved by the orders passed by the learned single Judge in W.P.(C) No.24432 of 2007 dated 21st August, 2007, petitioner is before us in this appeal.

2. In this appeal, we will be referring to the appellant as the petitioner for the sake of convenience.

3. Before the learned single Judge, the petitioner, primarily, had called in question the orders passed by the Additional District Magistrate, Alappuzha in number K.Dis.N2/27058/07 dated 18.07.2007.

4. The learned single Judge, without considering the effect of the orders passed by the Additional District Magistrate has rejected the Writ Petition filed by the petitioner. That is how, the petitioner is before us in this appeal.

5. Learned counsel appearing for the petitioner would contend before us that the Additional District Magistrate could not have passed the impugned order without affording an opportunity of hearing to the petitioner. Therefore, it is submitted that the orders passed by the Additional District Magistrate is in violation of the principles of natural justice. In support of that contention, the learned counsel brings to our notice that the notice of hearing was served on the petitioner through the village officer only on 24.07.2007, but the order was passed by the Additional District Magistrate on 18.07.2007 itself and therefore,

it is stated that even before the service of notice of hearing on the petitioner, the Additional District Magistrate has passed the impugned order. Therefore, a request is made, that the orders so passed by the Additional District Magistrate, without hearing the petitioner requires to be set aside by this court.

6. Shri C.K. Karunakaran, learned Standing Counsel for the K.S.E.B., appearing for the second respondent/K.S.E.B sought to justify the impugned order.

7. A perusal of the acknowledgement on the notice issued by the Additional District Magistrate (Ext.P2) would clearly indicate that the notice of hearing issued by the Additional District Magistrate on the petition filed by the Asst. Executive Engineer was served on the petitioner only on 24.07.2007. That means, when the order was passed by the Additional District Magistrate, the petitioner was not even heard in the matter. That only means, the order has been passed by the Additional District Magistrate without affording an opportunity of hearing to the petitioner. This action of the respondent is in violation of the principles of natural justice. Therefore, the orders passed by the Additional District Magistrate cannot be sustained by us. Accordingly, the following:

O R D E R

i) The Writ Appeal is disposed of .

ii) The orders passed by the learned single Judge in W.P.(C) No.24432 of 2007 dated 21st August 2007 is set aside.

iii) The proceedings of the Additional District Magistrate, Alappuzha in number K.Dis.N2-27058/07 dated 18.07.2007 is also set aside.

iv) Now the Additional District Magistrate, Alappuzha will hear the petitioner after issuing a proper notice to the petitioner and pass appropriate orders in accordance with law, as expeditiously as possible, at any rate, within two months from the date of receipt of a copy of this order.

v) All the contentions of both the parties are left open.

Ordered accordingly.

H.L. DATTU,
CHIEF JUSTICE.

K.T. SANKARAN,
JUDGE.

lk/DK.